



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.12.2017
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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C.M.A. (MD) No.503 of 2016
and
CMP (MD) No.6317 of 2016

The Branch Manager,
New India Assurance Company Limited,
II Floor, Rena Plaza,
S.S.Covil Road, Thambanoor,
Thiruvananthapuram, Kerala. ... Appellant/3rd Respondent

Vs.

1.Chithambara Vadivoo
2.V.Kumar
3.V.Murugan
4.V.Manickam
5.V.Geetha
6.V.Lakshmi ... Respondent 1 to 6/Petitioners
7.Pradeep

8. The Managing Director,
Kerala State Road Transport
Corporation,
Thiruvananthapuram. ...7th & 8th Respondents/Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.02.2016 made in MCOP.No.70 of 2011 on the file of the Special Court (Special Court for Forest Offences) Nagercoil.

For Appellant	: Mr.D.Malaichamy
For Respondents	: Mr.M.Mahaboob Athiff for M/s.Ajmal Associates for R1 to R6 Mr.S.Srinivasa Raghavan for R8 No appearance for R7.

JUDGMENT

The insurance company has filed this appeal questioning the impugned award principally on the ground of negligence.

2.One Esakkimuthu was travelling as a passenger in the bus belonging to the 8th respondent herein KSRTC on 20.07.2008. The deceased was a bachelor. His mother and siblings filed MCOP.No.70 of 2011 on the file of the Motor Accidents Claims



Tribunal / Special Court (Special Court for Forest Offences) Nagercoil. The Tribunal awarded a sum of Rs.9,47,500/- with interest. Contending that it was the deceased who was entirely at fault and that the compensation ought not to have been awarded, the insurer of the KSRTC had filed this appeal.

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3. Heard the learned counsel on either side.

4. The learned counsel appearing for the claimant placed considerable reliance on the evidence of PW.2, who is said to have travelled along with the deceased and witnessed the occurrence.

5. I went through his deposition in full. The said PW.2 admitted that he was not acquainted with the deceased prior to the accident. When asked whether he could disclose the name of the deceased and his address, the said witness answered in the negative. He did not lodge any information with the police. In fact, he appears to have left the spot and gone to the destination immediately after the occurrence. He did not visit the deceased's home to offer his condolence. According to the said PW.2, two days after the accident, he had gone to Thakkalai and that he happened to inform a old lady that he had witnessed the accident and that he had travelled along with the deceased. The said old lady asked for his address and P.W.2 gave address to the old lady. The meeting between the old lady and PW.2 had taken place near Thakkalai bus stand. For the second time in the cross examination the said PW.2 admitted that he was not aware of the name of the deceased. He of course stuck to his version that the deceased was getting down from the front door after the driver instructed the passengers to alight and the persons got down from the bus. The deceased was the last person to get down. Before he could get down from the bus, the vehicle was started at great speed. According to the said PW.2, the deceased lost his balance and fell down and the rear wheel ran over the head.

6. I am of the definite view that this PW.2 is a set up witness. His testimony does not inspire my confidence. I have referred to the answers given by him in the cross examination only to show that he could not have witnessed the accident. The Tribunal erred in placing reliance of his deposition. His deposition deserves to be rejected in toto.

7. The learned counsel appearing for the appellant insurance company would submit that even though Crime No.449 of 2008 was registered against the bus driver of the eighth respondent corporation, final report was filed as closing the case as one of mistake of fact. Ex.R3 was marked in this regard. The manner in which the accident had taken place also deserves to be noticed. The bus was getting into Thakkalai bus stand. Before the bus could stop, the deceased appears to have jumped from the moving



bus. Therefore, I am of the view that the Tribunal erred in fastening the entire negligence on the driver of the eighth respondent corporation. At the same time, I am not inclined to exonerate the eighth respondent or the appellant insurance company of all liability.

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8.It is on record that the bus had doors in the front as well as the rear. Even according to the appellant, the deceased opened the door and then jumped out. It is the duty of the bus conductor to ensure that the passengers do not alight before the bus came to a halt. The fact that the rear wheel ran over his head shows that the bus must have been driven in a rash and negligent manner.

9.Therefore, I would apportion 60% of the liability on the driver employed by the eighth respondent KSRTC. Since the deceased has to bear 40% of the negligence, the compensation payable to the claimants will have to be reduced. Thus, the compensation payable to the claimants will be reduced from Rs.9,47,500/- to Rs.5,68,500/-.

10.Accordingly, the award 24.02.2016 made in MCOP.No.70 of 2011 on the file of the Special Court (Special Court for Forest Offences) Nagercoil is modified.

11.It is seen from the records that following the interim order granted by this Court dated 09.09.2016, the mother of the deceased was allowed to withdraw 50% of her share on the deposited amount along with accrued interest and the other claimants were also permitted to withdraw Rs.50,000/- each along with accrued interest. Hence, the mother of the deceased is entitled to withdraw the balance amount if any, by filing appropriate application before the Tribunal. It is however made clear that the insurer shall not be at liberty to withdraw the amount already withdrawn by the claimants, even if excess of what has been quantified in this appeal. The insurance company is also permitted to withdraw the excess amount if any deposited.

12.This Civil Miscellaneous Appeal is partly allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar



1. The Motor Accidents Claims Tribunal /
Special Court (Special Court for Forest Offences) Nagercoil.

2. The Record Keeper, Vernacular Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.D.Malaichamy, Advocate SR.No.90805

+1cc to Mr.S.Srinivasa Raghavan, Advocate SR.No.91035

+1cc to M/s. Ajmal Associates, SR.No.90821

SKM

VB/KK/SAR2/19/03/2018/4P/7C

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